

CHAPTER 6
REQUIREMENTS FOR MANDATORY ERRORS AND OMISSIONS INSURANCE

193E—6.1(543B) Insurance requirement—general. As a condition of licensure under Iowa Code chapter 543B, all real estate licensees shall submit evidence of compliance with the mandatory errors and omissions insurance requirement.

6.1(1) Definitions.

“Aggregate limit” is a provision in an insurance contract limiting the maximum liability of an insurer for a series of losses in a given time period such as the policy term.

“Claims-made” means policies written under a claims-made basis will cover claims made (reported or filed) during the year the policy is in force for incidents which occur that year or during any previous period the policyholder was insured under the claims-made contract. This form of coverage is in contrast to the occurrence policy which covers today’s incident regardless of when a claim is filed even if it is one or more years later.

“Extended reporting period” is a designated period of time after a claims-made policy has expired during which a claim may be made and coverage triggered as if the claim had been made during the policy period.

“Licensee” is any active individual broker, broker associate, or salesperson; any partnership; or any corporation.

“Per claim limit” means the maximum limit payable, per licensee, for damages arising out of the same error, omission, or wrongful act.

“Prior acts coverage” applies to policies on a claims-made versus occurrence basis. Prior acts coverage responds to claims which are made during a current policy period, but the act or acts causing the claim or injuries for which the claim is made occurred prior to the inception of the current policy period.

“Proof of coverage” means a copy of the actual policy of insurance, a certificate of insurance or a binder of insurance.

“Retroactive date” is a provision found in many claims-made policies. The policy will not cover claims for injuries or damages that occurred prior to the retroactive date even if the claim is first made during the policy period.

6.1(2) Who shall submit plan of coverage. The following persons must submit proof of insurance:

- a. Any active individual broker, broker associate, or salesperson.
- b. Any partnership.
- c. Any corporation.

6.1(3) Inactive status. Individuals whose licenses are on inactive status are not required to carry errors and omissions insurance. Because firms are not allowed to place their licenses on inactive status, continual coverage will be required of all firms.

6.1(4) Territory. All resident Iowa licensees shall be covered for activities contemplated under Iowa Code chapter 543B both in and out of the state of Iowa. Nonresident licensees participating under the state plan shall be covered both in and out of the state of Iowa unless the state plan selected by the commission will only cover participating nonresidents when involved in real estate activities in the state of Iowa.

6.1(5) Insurance form. Licensees may obtain errors and omissions coverage through the insurance carrier approved by the commission and provided on a group policy basis. The following are minimum requirements of the group policy to be issued to the Iowa real estate commission including, as named insureds, all licensees who have paid the required premium:

- a. All activities contemplated under Iowa Code chapter 543B must be included as covered activities;
- b. A per claim limit of not less than \$100,000;
- c. An annual aggregate limit of not less than \$100,000;
- d. Limits are to apply per licensee, per claim;

- e. Defense costs are to be payable in addition to damages;
- f. The contract of insurance shall pay, on behalf of the insured person(s), liabilities owed.

6.1(6) Contract period. The contract between the insurance carrier and the commission may be written for a one-year period with the option to renew or renegotiate each year thereafter. The commission reserves the right to terminate the contract after written notice to the carrier at least 120 days prior to the end of any policy term and place the contract out for bid.

- a. Policy periods shall be not less than 12-month policy terms.
- b. The policy shall provide full and complete prior acts coverage.

(1) If the licensee purchased full prior acts coverage on or after July 1, 1991, that licensee shall continue to be guaranteed full prior acts coverage if insurance carriers are changed in the future.

(2) The retroactive date of the master policy shall never be later than July 1, 1991, for those that can provide proof of continuous coverage to that date.

(3) The retroactive date for each licensee shall be individually determined by the inception date of coverage and proof of continuous coverage to that date.

(4) The retroactive date for any new licensee who first obtains a license after July 1, 1991, shall be individually determined by the effective date of the license, the inception date of coverage, and proof of continuous coverage to that date.

193E—6.2(543B) Other coverage. Licensees may obtain errors and omissions coverage independently if the coverage contained in the policy complies with the following minimum requirements:

6.2(1) For an active individual licensee, all provisions of Iowa Code section 543B.47 apply.

6.2(2) For partnerships and corporations, otherwise known as firms, proof of other independently carried insurance to meet the requirements of Iowa Code subsection 543B.47(1) shall be submitted to the executive secretary of the Iowa real estate commission, at the current address. If the policy period of the other insurance expires during the calendar year, it is the responsibility of the firms to notify the executive secretary of the renewal of that coverage, or placement with the state program, within 30 days after the expiration of the policy by forwarding evidence of the policy renewal or an annual certificate of insurance.

6.2(3) It shall be the firm's responsibility to provide a list of licensees performing real estate activities under the broker or firm's coverage to the executive secretary of the Iowa real estate commission.

6.2(4) The following minimum requirements shall apply:

a. All activities contemplated under Iowa Code chapter 543B must be included as covered activities.

b. A per claim limit of not less than \$100,000.

c. An aggregate limit of:

- (1) Not less than \$250,000 for a broker or firm with 2 through 10 licensees;
 - (2) Not less than \$500,000 for a broker or firm with 11 through 40 licensees;
 - (3) Not less than \$1,000,000 for a broker or firm with 41 or more licensees.
- d. There is no maximum deductible limit for a firm coverage policy.

e. The maximum deductible for an individual policy for damages and defense, each licensee, each claim, shall not be more than the deductible of the commission group policy for the current policy term.

f. Self-insurance does not comply with the provisions of the Iowa errors and omissions insurance law.

6.2(5) If other insurance is provided, as proof of errors and omissions, the other insurance carrier shall agree to a noncancelable policy or provide a letter of commitment to notify the Iowa real estate commission 30 days prior to the intention to cancel.

6.2(6) If a firm size change results in a higher aggregate requirement, the firm shall correct this deficiency within one year, or the next renewal term of the insurance policy, whichever comes first.

6.2(7) Whenever commission requirements, coverage, or limits change, the commission shall provide a reasonable transition period to allow the licensee or firm the opportunity to change carriers or coverage to comply with all requirements and limits, providing the present policy was in effect and in

compliance with all prior requirements. The licensee or firm shall correct the deficiency within one year, or not later than the next renewal term of the insurance policy, whichever comes first.

6.2(8) It shall be the responsibility of the firm with group coverage and the licensee with individual coverage to notify the commission when changing insurance status, coverage, or provider.

This rule is intended to implement Iowa Code section 543B.47.

193E—6.3(543B) Administrative requirements—general. It is the responsibility of the insurance carrier or program manager to handle administrative duties relative to operation of the program accepted by the commission, including billing and premium collection, toll-free access for questions, and claim processing and general informational mailings.

6.3(1) Insurance carrier agreements. The insurance carrier or program manager agrees to send a billing notice to each licensee on the schedule provided to them by the commission, approximately three months in advance of inception (or renewal).

6.3(2) The insurance carrier or program manager further agrees that it shall be their responsibility to collect all premiums due and verify proper payment.

a. Payment shall be due approximately 45 days in advance of inception (or renewal) for the continuation of licensure.

b. A schedule of licensees who have paid the proper premium and who have coverage in force shall be provided to the commission at agreed time intervals.

6.3(3) The insurance carrier or program manager shall issue individual certificates to each licensee and a master policy to the commission.

6.3(4) It is the responsibility of the insurance carrier or program manager to market its program and to develop and distribute informational brochures about the coverages provided, services available and requirements of Iowa Code section 543B.47. The content of any brochures or other literature provided must be approved by the commission or the executive secretary.

6.3(5) The insurance carrier or program manager shall provide educational seminars in the state of Iowa at the request of the commission and subject to terms and conditions agreeable to each party involved.

193E—6.4(543B) Commission responsibilities. The commission shall provide to the insurance carrier or program manager a schedule of all active licensees approximately four months in advance of inception (or renewal), from which the insurance carrier or program manager will issue billing notices.

6.4(1) After a schedule of insured licensees is received from the insurance carrier or program manager, the commission will be responsible for comparing this schedule against its own records to determine if a licensee has furnished the commission with acceptable proof of insurance necessary for continued licensure.

6.4(2) It shall be the responsibility of the commission to review proof of other insurance received from licensees not participating in the state program and to confirm that the other insurance meets the minimum requirements of these rules.

6.4(3) The commission shall require receipt of proof of errors and omissions insurance from new licensees within 30 days of licensure. Any licenses issued at other than renewal shall be subject to a pro rata premium.

6.4(4) For licensees not submitting proof of insurance necessary to continue licensure, the commission shall be responsible for sending notice of deficiency to those licensees. Licensees who do not correct the deficiency within 30 days will have their licenses placed on inactive status. The commission shall assess a \$25 reinstatement fee if the licensee allows the errors and omissions insurance to lapse.

6.4(5) Any licensee, insured in the state program, whose license becomes inactive will not be charged an additional premium if the license is reinstated during the policy period.

These rules are intended to implement Iowa Code section 543B.47.

[Filed 4/26/91, Notice 3/20/91—published 5/15/91, effective 6/19/91]

[Filed 12/4/92, Notice 9/30/92—published 12/23/92, effective 1/27/93]

[Filed 1/12/95, Notice 11/23/94—published 2/1/95, effective 3/8/95]